

No. 14,492

IN THE

United States Court of Appeals
For the Ninth Circuit

RAYMOND J. KASPER,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

Appellant was tried before a jury and convicted on four counts of an indictment, each count charging an attempt to evade and defeat the payment of taxes due and owing the United States of America and thereby charging a violation of Title 26 U.S.C. Section 145B. (R. Vol. 1, 2-5.)

Count I charged defendant with attempting to evade a large part of his income tax by filing a false and fraudulent return on his income tax for the calendar year 1947 in that the net income shown was the sum of \$3492.64, whereas the defendant's true net income was the sum of \$20,277.45. (R. Vol. 1, 2-3.)

Count II charged the defendant with attempting to evade a large part of his wife's income tax for the calendar year 1947, by filing a false and fraud-

ulent return on behalf of his wife, Lucille B. Kasper, in that the net income shown was the sum of \$3814.08, whereas her true net income was the sum of \$20,519.20. (R. Vol. 1, 3.)

Count III charged defendant with attempting to evade a large part of his income tax by filing a false and fraudulent return on his income tax for the calendar year 1948 in that the net income shown was the sum of \$5000.29, whereas his true net income was the sum of \$7615.13. (R. Vol. 1, 4.)

Count IV charged defendant with attempting to evade a large part of his wife's income tax by filing a false and fraudulent return on behalf of his wife, Lucille B. Kasper, for her income tax for the calendar year 1948 in that the net income shown was the sum of \$5000.29, whereas her true net income was the sum of \$11,404.81. (R. Vol. 1, 4-5.)

The Court sentenced the defendant to a term of four months and a fine of \$1250.00 on each of the four counts (R. Vol. 1, 61), the terms of imprisonment to run concurrently, and to pay costs. From these judgments and sentences, the defendant takes this appeal.

JURISDICTIONAL STATEMENT.

1. The District Court: Jurisdiction was conferred on the District Court by 18 U.S.C. 3231.

2. The Court of Appeals: Jurisdiction of this appeal is conferred upon this Court by 28 U.S.C. 1221, 1294.

3. The pleadings: The pleadings necessary to show the jurisdiction of the District Court and this Court are:

(a) The indictment (R. Vol. 1, 2-5) and defendant's plea of "not guilty". (R. Vol. 1, 7.)

STATEMENT OF THE CASE PRESENTING THE QUESTIONS INVOLVED AND THE MANNER IN WHICH THEY ARE RECEIVED.

1. The nature of the case: The defendant was indicted on four counts of attempting to evade payment of income taxes by filing false and fraudulent income tax returns. Counts I and III charged him with filing false and fraudulent returns on his income tax for the years 1947 and 1948, respectively. Counts II and IV charged the defendant with attempting to evade payment for his wife's income taxes by filing false and fraudulent returns on behalf of his wife for the years 1947 and 1948, respectively.

The respondent grounded its case upon the "net worth theory". Thus, it attempted to prove the appellant's net worth and that of his wife as of December 31, 1946, December 31, 1947 and December 31, 1948. For simplicity, we will refer only to appellant's net worth and mean thereby the net worth of the defendant and that of his wife. The respondent then argued that the increase in net worth in 1947 purportedly shown by it was a result of taxable income for the calendar year 1947, and so similarly for the calendar year 1948.

In support of its case, the respondent sought to construct the defendant's net worth from December 31, 1936 to and including December 31, 1948. As a summary of the government's case, plaintiff introduced in evidence as plaintiff's Exhibit Number 54 a document showing the computation of the defendant's net worth for these years. This exhibit is reproduced as Appendix A to this brief.

The defense was twofold. On the one hand, evidence was introduced to show, not that the government's net worth calculations were wrong as to defendant's net worth as of December 31, 1947 and December 31, 1943, but that defendant's net worth on December 31, 1946, was considerably greater than the government calculated it to be. The difference arises, primarily out of the facts claimed by appellant that he had some \$43,000.00 in cash in his possession when he came to California in 1942 and the government, in its net worth computations, did not give him credit for this sum. The second defense asserted by the defendant was that in fact, and evidence in support thereof was adduced at trial, during the calendar years 1947 and 1948, the years charged in the Indictment, his taxable income, primarily his earnings from his medical practice, had been as reported on the tax returns in question; a table summarizing the proof in this regard is included herein as Appendix B.

The issues involved; There were, therefore, two substantial issues involved; the government had the burden of disproving both of them beyond a reasonable doubt.

1. Did the defendant have \$43,000.00 in cash when he came to Fresno, California in 1942? If he did, then the ostensible increase in net worth as of December 31, 1947 over December 31, 1946 and of December 31, 1948 over December 31, 1947, as shown on Plaintiff's Exhibit Number 54, Appendix A herein, is largely explained and shown, in fact, not to be an increase. Hence, no inference as to the existence of unreported taxable income could be drawn for the calendar years of 1947 and 1948.

2. Did the defendant earn in the calendar years of 1947 and 1948, that income, evidence of which was adduced at trial and which is summarized in Appendix B herein? If he did, the government's case must fall for the taxable income so testified to is not in excess of the taxable income reported on the tax returns for calendar years 1947 and 1948. And this is so, regardless of whether or not the government's calculations as to defendant's increase in net worth for the years 1947 and 1948 are accurate.

SPECIFICATION OF ERRORS.

Specification No. 1.

The Court erred in denying appellant's motion for a judgment of acquittal made at the conclusion of the government's case and again at the conclusion of all the evidence in the case, as to each Count in the Indictment. (R. Vol. 6, 550; Vol. 8, 938.)

Specification No. 2.

The verdict as to each Count is not supported by substantial evidence.

Specification No. 3.

The verdict as to each Count is contrary to the weight of the evidence.

Specification No. 4.

The Court erred in admitting into evidence Plaintiff's Exhibit numbers 47 and 48. These Exhibits are photostatic copies of the Joint Tax Returns filed by defendant and his wife with Internal Revenue in Nebraska for the years 1943-1944, respectively, together with a Certification by the District Director of Internal Revenue for the District of Nebraska.

These Exhibits were objected to as incompetent, irrelevant and immaterial. (R. Vol. 5 396-397.) Motions to strike these Exhibits on the same ground. (R. Vol. 6 547.)

Specification No. 5.

The Court erred in admitting into evidence Plaintiff's Exhibit number 53. This Exhibit is a signed and sworn statement dated March 25, 1952, given by defendant to agents of the Internal Revenue Service regarding defendant's assets, liabilities, earnings, records and so on.

The defendant objected to the introduction of the statement on the ground that the statement was incompetent, irrelevant and an attempt to introduce

admissions of the defendant in the absence of the establishment of the corpus delicti. (R. Vol. 5, 414.)

Specification No. 6.

The Court erred in instructing the jury as follows:

“You may consider in connection with this case the testimony of the so-called character witnesses which have been given and the witnesses who have testified as to the character of the defendant for truth, honesty and integrity in the community in which he lives. That evidence is to be considered by you along with all of the other evidence in the case in determining the guilt or innocence of the defendant.” (R. Vol. 9, 11-12.)

Defendant excepted to the instruction on the ground that the Court should have instructed that proof of good character in this case would be sufficient to give rise to a reasonable doubt. (R. Vol. 9, 26.)

Specification No. 7.

The Court erred in instructing the jury as follows:

“You have one issue in this case that may or may not enter into your consideration in determining the ultimate fact in the case. There was reference in the testimony to a so-called payment of \$2,500.00 to the defendant by a man who, under circumstances that were described as warranting the inference that it was a gift. Now, the jury will have to determine, if that enters into your consideration in the ultimate outcome of the case, as to whether or not that \$2,500.00 payment was a gift or whether or not it was in response to some act done or not done on behalf

of the giver by the recipient of the gift". (R. Vol. 9, 18-19.)

Defendant excepted to the instruction on the ground that it was an instruction which took out of context and laid undue emphasis on a payment which was not in issue since it was not within or for the taxable years in question. (R. Vol. 9, 26.)

Specification No. 8.

The Court erred in instructing the jury as follows:

"Now, I have one further comment to make to the jury which may be of help in determining the issues in this case. The government in this case contends that the defendant filed false and fraudulent income tax returns for the years 1947 and 1948, in that such returns failed to account for substantial net income for the years in question, and thereby that the defendant willfully attempt to evade a large part of income taxes due from him to the United States.

The government asserts that the evidence shows that the defendant failed to keep and preserve adequate books and accounts and records, and destroyed certain records to conceal evidence of his income.

That the evidence shows that by the so-called net worth analysis, that each year commencing in 1942 and including 1947 and 1948 the defendant's assets increased each year, and that such increase could only be accounted for by additional unaccounted for net income which the defendant, they say, willfully failed to report.

Now, that's the contention of the government. The defendant, on the other hand, contends that

there was no increase in his net worth during the years 1947 and 1948 over and above the reported net income which he made because he already, he claims, had large amounts of cash on hand, accumulated over the years from prior earnings and gifts.

The evidence as to these cash accumulations requires your appraisal, members of the jury. That is what you have to examine. You have to determine how you weigh the evidence as to these cash accumulations which are, in my judgment, the determining factor in arriving at a decision in this case on the part of the jury.

Now, in appraising and weighing the evidence in that regard, you should consider all the facts and circumstances, all the testimony and the documents disclosed in the record. Now, I am going to give you an example of what I mean by that:

The defendant contends that he brought with him to California from Nebraska in 1942 a large sum of cash, which he says he accumulated from savings earned in his practice and from gifts. The government claims that this claim should not be accepted because of circumstances which they have put into the record pertaining to borrowings from the bank in Nebraska, statements to the bank in Nebraska, assessment records and tax records concerning the defendant's stay in Nebraska, and similar data of that kind.

You should analyze and consider all of the evidence in connection with this, and from those facts and circumstances you should resolve the truth out of that. I call your attention to this particular phase of the case, not because I am

emphasizing it, but merely by way of illustration. You should apply, in my opinion, the same method of analyzing and weighing the evidence with respect to all the other evidence in the case that has anything to do with the taxable income of the defendant, in order that you may resolve the truth.” (R. Vol. 9, 19-21.)

Specification No. 9.

The Court erred in failing to instruct the jury, as requested in Defendant’s Requested Instruction No. 27, as follows:

“Subject: Proof required as to specific years charged.

In considering the question of the defendant’s income during the years 1947 and 1948, as set forth in the charge herein, certain evidence has been introduced relating to the acquisition, holding or expenditure of funds or property by the defendant. The jury, however, may not assume that the funds or property acquired, held or expended by the defendant were taxable income during the specific years charged in the indictment. The Government has the burden of proving beyond a reasonable doubt that such funds and property acquired, held or expended were taxable income for the specific calendar years in question, and in the absence of such proof beyond a reasonable doubt, the jury must find the defendant ‘not guilty’.” (R. Vol. 1, 31.)

Specification No. 10.

The Court erred in failing to instruct the jury, as requested in Defendant’s Requested Instruction No. 30, as follows:

“Subject: Taxable income for the year alleged—Burden of proof.

You are instructed that the prosecution has the burden of proving beyond a reasonable doubt that the defendant willfully evaded taxes by understating his taxable income on his returns, and those of his wife, for the years alleged in the indictment, 1947 and 1948. It must prove beyond a reasonable doubt that the amounts of any monies or property that the defendant received, held, or expended during the calendar years in question, on which figures the prosecution's case depends, are taxable income. If the evidence in this case leaves a reasonable doubt in your mind as to whether any difference between the reported figures, and those alleged or depended upon by the prosecution, were the result of monies or property accumulated in prior years, or were the result of gifts, or a combination of the two, then it is your duty to resolve that doubt in favor of the defendant and return a verdict of ‘not guilty’ as to such tax year or years.” (R. Vol. 1, 32-33.)

Specification No. 11.

The Court erred in failing to instruct the jury, as requested in Defendant's Requested Instruction No. 43, as follows:

“Subject: Specific tax years involved—Reasonable doubt.

You are instructed that if the jury determines from all of the evidence that the defendant *Raymond J. Kasper* willfully and knowingly attempted to evade and defeat a large part of the income tax due and owing by him to the United States of America, but cannot ascertain

that beyond a reasonable doubt that the acts of the defendant were committed with respect to the specific calendar tax year 1947, as to counts one and two, and with respect to the specific tax year 1948, as to counts three and four, rather than as to other years, then the jury must not return a verdict on the basis of speculation that such acts took place with respect to the specific years named in the indictment, but must return a verdict of 'not guilty' as to the defendant, *Raymond J. Kasper*." (R. Vol. 1, 42-43.)

Specification No. 12.

The Court erred in failing to instruct the jury, as requested in Defendant's Requested Instruction No. 46, as follows:

"Relative to the testimony pertaining to the character of the defendant in respect to those traits of character which ordinarily would be involved in the commission of an offense like that charged in this case, I would instruct you as follows: Such evidence is regarded by the law as relevant to the question whether defendant is innocent or guilty of the crime charged, because the jury may, if its judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged. Character evidence of itself may be sufficient to raise a reasonable doubt whether or not the defendant is guilty, which doubt otherwise would not exist. Hence, you must consider such evidence in connection with all other evidence in the case." (R. Vol. 1, 45-46.)

Specification No. 13.

The United States Attorney was guilty of prejudicial misconduct in his cross-examination of *Paul Gregg*, a character witness for appellant, by asking him the following questions:

“Mr. Gregg. Did you know, or have you heard that Dr. Kasper was discharged by Dr. Burks for dishonesty?” (R. Vol. 8, 839.)

“Had you known that, would that have affected your opinion as to his reputation—as to the reputation of Dr. Kasper?” (R. Vol. 8, 839.)

ARGUMENT.

I. THE COURT ERRED IN DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL MADE AT THE CONCLUSION OF THE GOVERNMENT'S CASE AND AT THE CONCLUSION OF THE EVIDENCE. (Specification of Errors Nos. 1, 2, 3, 5.)

At the conclusion of the government's case, taking the government's evidence as having been admitted, the posture of the case was as follows: The government had proved an increase of appellant's net worth in 1947 of approximately \$38,000.00. Equating the increase in net worth with income and making certain deductions for nontaxable income, the government produced a figure of \$36,931.22 as taxable net income for 1947. The appellant had reported a taxable net income of \$7,306.72. Similarly, for 1948, the government showed an increase in net worth of \$28,808.73. Equating that figure with income, and then subtracting certain items of nontaxable income, the government designated the remainder as taxable net income

and produced a figure of \$17,842.72. Appellant's reported income for that year was \$10,000.58. (Plaintiff's Exhibit No. 54—Appendix A.)

Further, assuming as we must, that the government's evidence is given its full weight, the government has shown that the increase in net worth in 1947 and 1948 was not the result of the expenditure in those years of a cash hoard accumulated prior to December 31, 1946, unaccounted for as an asset on Plaintiff's Exhibit No. 54 in the computation of appellant's net worth as of December 31, 1946.

With this foregoing summary, however, we have conceded all that the government's case in chief, and all of the inferences therefrom, can warrant. Is that evidence sufficient to convict? It is urged that it is not.

The government, in order to sustain the burden of proving a net worth case of income tax evasion, must produce evidence that increases in appellant's net worth for the tax years in question were attributable to currently taxable income; or must produce evidence from which the jury could infer that fact. (*Holland v. United States*, U.S., 99 L.Ed. Adv. R. 127.) In the *Holland* case, the government in order to sustain its burden in this regard, proved that the business of defendant increased during the tax years in question, although the defendant reported a fall in profits. The government proved further that a substantial sum of money received by the defendant in the operation of his business in the very tax year for which defendant had been convicted of tax evasion,

some \$12,500.00, had not been recorded in the books of the defendant. As the Supreme Court said in the *Holland* case, comparing it with *United States v. Johnson*, 319 U.S. 303, in which the Supreme Court had affirmed a conviction based on net worth, "There (i.e. *Johnson* case) the taxpayer was an owner of an undisclosed business capable of producing taxable income; here the disclosed business was proven to be capable of producing much more income than was reported and in a quantity sufficient to account for the net worth increases." (..... U.S., 99 L. Ed. Adv. R. 138.)

Now in the instant case, the appellant, unlike the defendant in *Johnson*, engaged in a disclosed pursuit of a profession—the practice of medicine. Unlike the government's case in *Holland*, here the government never proved facts from which it could be inferred that appellant's practice of medicine in 1947 and 1948, was capable of producing a taxable net income of \$36,931.22 and \$17,842.72, respectively. The government's own calculations as to defendant's taxable net income show that in 1943 it was \$4,747.50; in 1944, \$11,109.21; in 1945, \$19,876.52; and 1946, the year immediately preceding the tax years in question, \$6,802.74. (Plaintiff's Exhibit 54, Appendix A.) As a consequence, the government would have us believe that appellant's earnings increased over 500% from 1946 to 1947, despite the fact that his taxable income had decreased by almost 300% from 1945 to 1946, and that a practice which produced a taxable net income in 1946 of \$6,802.74 was capable of producing a taxable net income of \$36,931.22 in 1947.

But even these calculations of prior net worth cannot be used by the government to support its case in this regard, for these figures suffer from the same infirmity that the government's 1947 and 1948 calculations suffer from. The government's calculations as to taxable net income for the years prior to 1947 are based on net worth increases. There is no evidence as to the doctor's earnings in the case that would support an inference that his practice was producing more taxable net income than he was reporting from 1943, the year the appellant entered into private practice in Fresno, California, through 1946. Thus, if the government argues that its net worth calculations for the years 1943 to 1946, inclusive, show a source of taxable income in the appellant's medical practice from which it could be inferred that appellant's net worth increases in 1947 and 1948 were derived, it is in the language of that banal adage, lifting itself by its own boot straps. As an example, suppose the government argues that since the appellant's increase in net worth plus additions amounted to \$20,538.75 in 1945 and since defendant's taxable net income in 1945 was \$19,876.25 (see Exhibit 54, Appendix A) it shows that defendant could have earned from his practice sufficient income to produce a net taxable income of \$17,842.72 for 1948, as the government claims appellant did, in fact, receive. Of course, that would conveniently overlook the fact that according to the government's own calculations, appellant's increase in net worth plus additions in 1946 was \$7,465.24 and his taxable net income for that year was nil. How-

ever, meeting the inference head on, there is no evidence that appellant by his medical practice or in any other way, was capable of producing taxable net income in the amount of respondent calculated for 1945, for its 1945 calculation is based on exactly the same method as its 1947 and 1948 calculations, which method, in its essential characteristic, consists of equating net worth increases with taxable income *and no more*. Yet, the something more—a source capable of producing income in the amount the respondent claims that appellant received, is an essential element in the prosecution's proof in a net worth case, as the Supreme Court held in the *Holland* case.

Several other matters need discussion in this context.

(A) The government produced six witnesses, who testified they were patients of appellant in 1947 or 1948, or in both years. These witnesses are *Henry Hamilton* (R. Vol. 3, 175-183), *Mrs. Arley Gayer* (R. Vol. 3, 183-190), *Mrs. A. M. Delena* (R. Vol. 3, 191-195), *Billie Dias* (R. Vol. 3, 196-199), *Ted Pickup* (R. Vol. 3, 200-206) and *Fred Zullfa* (R. Vol. 3, 207-215). From the testimony of these witnesses, it would appear that they paid appellant a total of approximately \$7,200.00 for medical services during 1947 and 1948. It might be argued that if only six patients paid \$7,200.00 in two years, the jury could infer that appellant had a very substantial practice capable of producing the income the government claims was produced in fact. To this, there are several objections.

(1) The government produced no evidence as to how many patients appellant had during 1947 and 1948.

(2) The average figure of each patient paying \$1,200.00 for medical services in the two years is statistically unreliable because of the errors produced in using such a small sample (i.e. 6). Thus one witness, Mr. Zullfa testified that appellant was treating the witness and the witness' wife and child during 1947 and 1948, that the appellant made as many as 250 calls per year for each of these two years, and that the witness paid almost \$6,000.00 to appellant for medical services during those two years. (R. Vol. 3, 213-214.) One does not have to argue at length that not many families are as unfortunate as the Zullfa family with respect to their health nor that general medical practitioners do not have many such remunerative patients. Another witness, Mrs. Gayer, testified to payments totaling about \$466.00 for the two years. But she also testified that she went to the doctor twice a week during this period for a hypodermic injection of some kind and paid at the rate of \$2.50 per injection. (R. Vol. 3, 184.) Another witness, Mrs. Delena, testified she paid medical fees of \$106.00 in 1947. But this included a bill of \$100.00 for maternity care. (R. Vol. 3, 192.) Without going on in this vein, it can be seen that the testimony of all six of these witnesses can not be used as a proper basis of determining the income from the appellant's medical practice.

(B) It may be argued that though the government in proving a net worth case need not negate each possible nontaxable source of net worth increase (*Holland v. United States*, supra), but if it does prove the negative the inescapable deduction is that the increase in net worth must be due to taxable income. In this connection the government might rely on appellant's statement given to agents of the Internal Revenue Service in 1952, Plaintiff's Exhibit No. 53, particularly at pages 21-24, inclusive, as constituting an admission by appellant that he had received no inheritances during the tax years in question and that his testimony as to the gifts he received support the inference that he did not receive gifts sufficient to account for the difference between his taxable income as reported for the two years in question and the increases in net worth calculated by the government.

While we might agree with the general statement above, the argument should fail for two reasons here:

(1) Conceding admissibility of appellant's extrajudicial statement, Plaintiff's Exhibit No. 53, the statement does not negative all the possible sources of nontaxable receipts, but at best, only two possible sources of nontaxable receipts, i.e. gifts and inheritances are negated. The government may prove a source of taxable income sufficient to account for the increase in net worth, or it may negate receipt of wealth from all nontaxable sources, or it may presumably do both; but it cannot rely solely on negating some sources of nontaxable receipts for, in such case,

it has failed to sustain its burden of proof. If, however, it is held that the admissions are sufficient to negate nontaxable receipts as a source of appellant's increase in net worth, then,

2. The admissions of appellant with respect to his answers in Plaintiff's Exhibit No. 53, to questions concerning gifts or inheritances received by him in 1947 and 1948 are extrajudicial admissions made after the fact to an official charged with investigating the possibility of wrongdoing, and the statement embraces a fact necessary to the proof of an essential element to the case. As such, lacking corroboration these extrajudicial declarations should not have been admitted in evidence. (*Smith v. United States*, U.S., 99 L. Ed. Adv. R. 143.) Certainly the government's case in chief is devoid of any evidence tending to corroborate appellant's admission that he had received no inheritances in the tax years in question. With respect to the matter of gifts for the tax years in question, the only evidence in the record of respondent's case in chief is the evidence of the six patients of appellant's referred to in paragraph A above, wherein each witness, during the course of the government's direct examination, denied making gifts to appellant. This can hardly tend to substantiate an admission as to the receipt of gifts or lack of receipt of gifts from patients as answered by appellant in his statement to the questions of the government's investigators. (Plaintiff's Exhibit 53, pp. 21-24.)

(C) It may be argued that appellant did not have records of his receipts for 1947 and 1948 and therefore the increase in net worth for the years 1947 and 1948 gives rise to the inference that appellant was evading payment of taxes. It is true that in the *Smith* case, *supra*, and in *United States v. Calderon*, U.S., 99 L. Ed. Adv. R. 152, the Supreme Court said that an inference of tax evasion could be based on the fact that the taxpayer's visible assets greatly increased at a time when he was receiving unrecorded amounts of taxable income. Here, however, there is no evidence that defendant was receiving unrecorded amounts of income. The only evidence is that the defendant at some time destroyed a number of his patients' cards, and his log or daybook in which was recorded, daily, the name of each patient and the amount of the bill and whether it was paid or not. However, the appellant did prepare monthly summary sheets from his daily total receipts and yearly summary sheets from his monthly summary sheets. These were not destroyed. There is no evidence indicating that any income received by defendant in 1947 and 1948 was unrecorded anywhere in his records. We are not arguing that the government cannot use a net worth technique to prove its case. What we do urge is that the government has failed to show unrecorded income for the tax years in question and therefore the inference of tax evasion that could have arisen, if such a showing had been made, cannot arise here.

(D) Summarizing our entire argument in this respect, our position is as follows:

We concede that the government showed an increase in net worth in 1947 greater than the taxable income reported by appellant for that year, and we so concede for 1948. But, the government failed to sustain its burden of proof as to the source of that net increase in the taxable years in question because:

(1) The government failed to show a potentiality of taxable income in the tax years in question from which it could be inferred that the increase in net worth was from taxable sources; or

(2) The government failed to negate the possibility that appellant's increase in net worth for the tax years in question arose from nontaxable sources; or

(3) The government failed to show receipt of unrecorded taxable income for the years in question from which, in conjunction with appellant's increases in net worth for those same years, it could be inferred that appellant was attempting to evade payment of income taxes.

II. THE COURT ERRED IN ADMITTING INTO EVIDENCE PLAINTIFF'S EXHIBITS NUMBERS 47 AND 48. (Specification of Error No. 4.)

These exhibits are photostatic copies of the joint tax returns filed by appellant and his wife with the Collector of Internal Revenue in Nebraska for the years 1943 and 1944, respectively, together with a certificate

tion by the District Director of Internal Revenue for Nebraska. Each certification represents that the original tax return had been destroyed pursuant to departmental directive and then goes on to state as follows: "I further state that it was the policy of the Internal Collection District of Nebraska to procure photostats of certain 1943 income tax returns where such returns were involved in criminal or civil investigation which had not been completed at the time such returns were to be destroyed." A similar provision is in the certification of the photostatic copy of the 1944 return. The introduction of these returns with their certifications in effect permitted the government to raise, at the least, an inference that the appellant had been in difficulty with the Internal Revenue Service twice before and, at the worst, the impression that this appellant was an habitual criminal violator of the federal income tax law. Now the exhibit with its certification was certainly not admissible to show that appellant was suspected of prior tax evasion and, in fact, the evidence was offered only as a part of the proof of the government's net worth calculations. However, whatever the value of the proof of appellant's income tax returns for 1943 and 1944 might have been in establishing appellant's net worth, it was certainly outweighed by the prejudicial effect of the certification. Furthermore, in authenticating the photostats as an official record, it would certainly seem necessary to explain at most that the originals had been destroyed pursuant to departmental directive requiring destruction of all

1943 returns. Thus it would appear that the reference to a criminal or civil investigation was a calculated attempt on the part of the prosecution to bring that to the attention of the jury.

III. THE COURT SHOULD HAVE INSTRUCTED THE JURY THAT CHARACTER EVIDENCE MAY ITSELF BE SUFFICIENT TO CREATE IN THE MINDS OF THE JURY A REASONABLE DOUBT AS TO THE GUILT OF THE APPELLANT. (Specification of Errors Nos. 6 and 12.)

At the trial, the appellant produced on his behalf seven character witnesses including his parish priest, two doctors and a prominent businessman. In addition, appellant made as his own witnesses for the purpose of character testimony several of his patients who had testified on behalf of the government. All witnesses testified that appellant had a good reputation. See, for example, the testimony of Monsignor James Dowling (R. Vol. 7, 744), Paul Gregg (R. Vol. 8, 835), Dr. Allison A. Callaway (R. Vol. 8, 840) and Dr. Jack Wilkinson (R. Vol. 8, 843).

The Court instructed the jury in connection with evidence of character: "that evidence is to be considered by you along with all of the other evidence in the case in determining the guilt or innocence of the defendant." (R. Vol. 9, 11-12.) In a case where the outcome may depend in good part on the character of the defendant, the Court's instruction as to the testimony of character witnesses must be stronger than merely stating that it is to be considered along

with all of the other evidence. Particularly should this be true where the nature of the case is such that the prosecution's case is built on a warp of assumptions and a woof of circumstantial evidence, and the defendant, as the Supreme Court pointed out in the *Holland* case, encounters many obstacles in convincing the jury of cash hoards, and "may be entirely honest and yet unable to recount his financial history". (*Holland v. United States*, U.S., 99 L. Ed. Adv. R. 133.)

The Court should have instructed the jury as set forth in Defendant's Requested Instruction Number 46 that "character evidence of itself may be sufficient to raise a reasonable doubt whether or not the defendant is guilty, which doubt otherwise would not exist. Hence, you must consider such evidence in connection with all other evidence in the case." (R. Vol. 1, 45-46.)

In *Edgington v. United States*, 164 U.S. 361, 17 S. Ct. 72, 41 L. Ed. 467, appellant was convicted of the crime of making a false deposition in aid of a fraudulent pension claim. Upon appeal to the Supreme Court, one of the errors assigned was the trial Court's instruction on character evidence. The Supreme Court stated in 164 U.S. at page 366, 17 S. Ct. at page 73, 41 L. Ed. at page 471:

"Whatever may have been said in some of the earlier cases, to the effect that evidence of the good character of the defendant is not to be considered unless the other evidence leaves the mind in doubt, the decided weight of authority

now is that good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although without it the other evidence would be convincing.”

See, also:

Michelson v. United States, 335 U.S. 469, 93 L. Ed. 168.

In *United States v. Donnelly*, 179 F. 2d 227, Donnelly was convicted of armed robbery. At the trial Donnelly introduced character testimony. The trial Court instructed the jury on this point in substantially the same language as was used in the case at bar. Donnelly requested substantially the same instruction asked here. The Court of Appeals reversed the conviction and held that the instruction requested by Donnelly should have been given.

In *United States v. Wicoff*, 187 Fed. 2d 886, 890, a prosecution for aiding and abetting a bank cashier to willfully misapply funds belonging to a bank, the Court stated “such evidence (character evidence) may itself be sufficient to create in the minds of the jury a reasonable doubt of the guilt of the defendant. (Citations omitted.) This is especially true in cases involving the element of fraudulent intent.” Certainly the case at bar involves “the element of fraudulent intent”. Where, as the Supreme Court said in the *Holland* case, “Trial courts should approach

these cases in the full realization that the taxpayer may be ensnared in a system which, although difficult for the prosecution to utilize, is equally hard for the defendant to refute." (..... U.S., 99 L. Ed. Adv. R. 134) an error in an instruction which placed a greater burden on the appellant than the law requires, prejudiced a substantial right of the appellant and is reversible error.

IV. THE COURT ERRED IN CHARGING THE JURY WITH RESPECT TO AN ALLEGED PAYMENT RECEIVED BY APPELLANT IN THE AMOUNT OF \$2500.00. (Specification of Error No. 7.)

At the trial, evidence was introduced, Plaintiff's Exhibit No. 53, at pages 22 and 23 thereof, and appellant's testimony on cross-examination (R. Vol. 8, 904-908), that appellant received \$2500.00 under the following circumstances: Appellant received a call one night from a man, X. He went to a hotel where he treated a woman for injuries suffered by X cutting his initials on her abdomen with a broken bottle. X was present at the motel. Subsequently, X paid appellant for his services. Subsequent to that date, appellant received \$2500.00 through the mail from someone who remained anonymous, but whose initials corresponded with the initials of X. This occurred prior to 1947. The appellant testified that he considered the \$2500.00 a gift. The incident was not reported to police by appellant.

The Court instructed:

"You have one issue in this case that may or may not enter into your consideration in deter-

mining the ultimate fact in the case. There was reference in the testimony to a so-called payment of \$2500 to the defendant by a man who, under circumstances that were described as warranting the inference that it was a gift. Now, the jury will have to determine, if that enters into your consideration in the ultimate outcome of the case, as to whether or not that \$2500 payment was a gift or whether or not it was in response to some act done or not done on behalf of the giver by the recipient of the gift." (R. Vol. 9, 18-19.)

This instruction was totally unnecessary for the issue could not enter into the case because:

(a) The transaction did not occur during either of the tax years in question, and

(b) It was not an element in the Government's proof of appellant's net worth for any of the years set forth in Plaintiff's Exhibit No. 54. Thus, the instruction raised an issue for the jury where, as a matter of law, none existed.

The instruction was prejudicial because it focussed the attention of the jury on a transaction or event which might have reflected or might have tended to reflect adversely on the character of appellant and which could have certainly affected the jury's consideration of the case.

This instruction was, further, essentially prejudicial since it advised the jury that they could consider, in arriving at their verdict, the nature of this \$2,500.00 as either gift or earnings. This was plain error because the money was received prior to and

outside either tax year in question. The jury, following the Court's instruction, might have decided that this sum was earned income; accordingly found against appellant; and all of this with reference to a sum which without dispute was not received in 1947 or 1948.

V. SPECIFICATION OF ERROR NOS. 8, 9, 10, 11.

The Court instructed in effect that the government claimed to have proved a net worth case, that is, increases in net worth for the tax years in question which could only be accounted for as unreported net income; that the appellant claimed that the appellant's increase in net worth for these two years was not real because he had large amounts of cash on hand accumulated over the years by gifts and earnings. The Court then said:

"The evidence as to these cash accumulations requires your appraisalment, members of the jury. That is what you have to examine. You have to determine how you weigh the evidence as to these cash accumulations which are, in my judgment, the determining factor in arriving at a decision in this case on the part of the jury. Now, in appraising and weighing the evidence in that regard, you should consider all the facts and circumstances, all the testimony and the documents disclosed in the record. Now, I am going to give you an example of what I mean by that:

The defendant contends that he brought with him to California from Nebraska in 1942 a large

sum of cash, which he says he accumulated from savings earned in his practice and from gifts. The government claims that this claim should not be accepted because of circumstances which they have put into the record pertaining to borrowings from the bank in Nebraska, statements to the bank in Nebraska, assessment records and tax records concerning the defendant's stay in Nebraska, and similar data of that kind.

You should analyze and consider all of the evidence in connection with this, and from those facts and circumstances you should resolve the truth out of that.

I call your attention to this particular phase of the case, not because I am emphasizing it, but merely by way of illustration. You should apply, in my opinion, the same method of analyzing and weighing the evidence with respect to all the other evidence in the case that has anything to do with the taxable income of the defendant, in order that you may resolve the truth." (R. Vol. 9, 19-21.)

The charge was bad for two reasons:

(A) It told the jury to find the truth either in the Government's contentions or in the appellant's contentions. The effect of such an instruction is to strip from the prosecution its burden of proving a defendant in a criminal case to be guilty beyond a *reasonable doubt*. In *Bihn v. United States*, 328 U.S. 633, 637, 90 L.Ed. 1480; 1487-1488 the crucial question was whether the petitioner had stolen certain gasoline ration coupons. The Trial Court instructed the jury that they were to decide whether petitioner

stole the coupons, and, if not, who did. The Supreme Court, reversed the conviction stating:

“We assume that the charge might not be misleading or confusing to lawyers. But the probabilities of confusion to a jury are so likely (cf. *Shepard v. United States*, 290 U.S. 96, 104, 78 L.Ed. 196, 201, 54 S.Ct. 22) that we conclude that the charge was prejudicially erroneous.

Instructions to acquit, if there was reasonable doubt as to petitioner's guilt, were given in other parts of the charge. Those were general instructions. They would be adequate, standing alone. But on the crucial issue of the trial—whether petitioner or one of four other persons stole the coupons from the bank—no such qualification was made; and the question was so put as to suggest a different standard of guilt”.

In the instant case, just as in the *Bihn* case, the Trial Court gave proper instructions, couched in general language, on reasonable doubt (R. Vol. 9, 7-8.) But when the Court instructed precisely on a vital issue in the case, it cast its instruction in terms of—either believe the government or believe the defendant—without pointing out the qualification of reasonable doubt. And the Court's charge not only once directed the jury to “resolve the truth” without reference to a reasonable doubt, the court did it twice.

Was the error prejudicial error? The Supreme Court, in the *Bihn* case held that it was prejudicial error because it could not say from the whole record that it *affirmatively* appeared that the error was *not* prejudicial. See also *Bollenbach v. United States*, 326

U.S. 607, 90 L.Ed. 350. In the case at bar, can this Court say that it affirmatively appears from the record that the error committed by the Trial Court in stripping from the appellant the protection of the reasonable doubt rule on this vital issue was not prejudicial error?

(B) The effect of the Court's charge was to eliminate the defense of appellant that he earned in 1947 and 1948 just what he reported. The evidence in this regard summarized as Appendix B to this brief, consisted of the number of various types of cases treated by the doctor, and the rates of payment therefor. This evidence was not controverted by the government.

Now the jury might have believed the government's calculations as to net worth increases in 1947 and 1948. The jury could have disbelieved appellant's explanation of those increases. But the jury could have had a reasonable doubt about appellant's taxable income for the tax years in question based solely on the evidence offered by the defense in this regard. Under such circumstances, the jury would have had to acquit appellant. But the Court by its instruction centered the case on the question of appellant's asserted cash accumulations and thereby misdirected the attention of the jury.

In the *Bollenbach* case above, the Supreme Court reversed a conviction saying "A conviction ought not to rest on an equivocal instruction to a jury on a basic issue". (326 U.S. at page 613, 90 L.Ed. at page 355.) Again, the Court said,

“Accordingly, we cannot treat the manifest misdirection in the circumstances of this case as one of those ‘technical errors’ which ‘do not affect the substantial rights of the parties’ and must therefore be disregarded. (stat. cit. omit.) All law is technical if viewed solely from concern for punishing crime without heeding the mode by which it is accomplished. The ‘technical errors’ against which Congress protected jury verdicts are of the kind which led some judges to trivialize the law by giving all legal prescriptions equal potency. See Taft, *Administration of Criminal Law* (1905) 15 *Yale LJ* 1, 15. Deviations from formal correctness do not touch the substance of the standards by which guilt is determined in our Courts, and it is these that Congress rendered harmless. (cit. omit.) From presuming too often all errors to be ‘prejudicial’, the judicial pendulum need not swing to presuming all errors to be ‘harmless’ if only the appellate court is left without doubt that one who claims its corrective process is, after all, guilty. In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be.” 326 U.S. at pages 614-615, 90 L.Ed. 355-356.

In this context the Court’s attention is invited to the fact that appellant requested three instructions. (Defendant’s Requested Instructions Numbers 27, 30 and 43; R. Vol. 1, 31, 32-33, 42-43.)

For the sake of clarity in presenting this contention, appellant respectfully calls to the attention of the Court the following instructions requested by appellant, refused by the Court below, and not embraced in the instruction as given:

(1). With reference to specification of error No. 9 appellant's Requested Instruction No. 27:

“Subject: Proof required as to specific year charged.”

In considering the question of the defendant's income during the years 1947 and 1948, as set forth in the charge herein, certain evidence has been introduced relating to the acquisition, holding or expenditure of funds or property by the defendant. The jury, however, may not assume that the funds or property acquired, held or expended by the defendant were taxable income during the specific years charged in the indictment. The government has the burden of proving beyond a reasonable doubt that such funds and property acquired, held or expended were taxable income for the specific calendar years in question, and in the absence of such proof beyond a reasonable doubt, the jury must find the defendant 'not guilty'." (R. Vol. 1, 31.)

(2). With reference to Specification of Error No. 10, appellant's Requested Instruction No. 30:

“Subject: Taxable income for the year alleged, burden of proof.”

You are instructed that the prosecution has the burden of proving beyond a reasonable doubt that the defendant willfully evaded taxes by understating his taxable income on his returns, and

those of his wife, for the years alleged in the indictment, 1947 and 1948. It must prove beyond a reasonable doubt that the amounts of any monies or property that the defendant received, held, or expended during the calendar years in question, on which figures the prosecution's case depends, are taxable income. If the evidence in this case leaves a reasonable doubt in your mind as to whether any difference between the reported figures, and those alleged or depended upon by the prosecution, were the result of monies or property accumulated in prior years, or were the result of gifts, or a combination of the two, then, it is your duty to resolve that doubt in favor of the defendant and return a verdict of 'not guilty' as to such tax year or years." (R. Vol. 1, 32-33.)

(3). With reference to Specification of Error No. 11, appellant's Requested Instruction No. 43.

"Subject: Specific tax years involved—reasonable doubt.

You are instructed that if the jury determines from all of the evidence that the defendant *Raymond J. Kasper* willfully and knowingly attempted to evade and defeat a large part of the income tax due and owing by him to the United States of America, but cannot ascertain that beyond a reasonable doubt that the acts of the defendant were committed with respect to the specific calendar tax year 1947, as to counts one and two, and with respect to the specific tax year 1948, as to counts three and four, rather than as to other years, then the jury must not return a verdict on the basis of speculation that such acts took

place with respect to the specific years named in the indictment, but must return a verdict of 'not guilty' as to the defendant, *Raymond J. Kasper*.'" (R. Vol. 1, 42-43.)

The giving of these instructions would have pinpointed for the jury, the proposition that the jury could not assume that mere proof of net worth increases in the years charged in the indictment represented taxable income earned in those years, but the government had to prove that fact, if it be a fact, beyond a reasonable doubt and for those specific years. If the Court had so charged, then the jury would have had before it, as a crucial issue in the case, the evidence offered by the defense as to appellant's earnings in 1947 and 1948 as well as the evidence offered by the government which showed or tended to show that appellant's practice could not produce the taxable income that the government claimed it did produce. The Court, by failing to charge as requested, deprived the appellant of a valid theory of the case essential to his defense.

When "Charges should be especially clear, including, in addition to the formal instruction, a summary of the nature of the net worth method, the assumptions on which it rests, and the inferences available both for and against the accused", *Holland v. United States*, U.S., 99 L. Ed. Adv. R. 134, the Court's emphasis in its charge on one aspect of appellant's defense to the exclusion of the other aspect, was prejudicial and reversible error.

VI. SPECIFICATION OF ERROR NO. 13.

The United States Attorney was guilty of prejudicial misconduct and the trial Court erred in permitting the United States Attorney, in cross-examining appellant's character witness, Paul Gregg, to ask "Mr. Gregg, did you know or have you heard that Doctor Kasper was discharged by Doctor Burks for dishonesty?" (R. Vol. 8, 839.) The rule is settled that in cross-examining a character witness, the proper form for the question asked here, is "have you heard" and not "did you know". *Michelson v. United States*, 335 U.S. 469, 481, 93 L. Ed. 168, 177; *Stewart v. United States*, 104 Fed. 2d 234. One obvious objection to the form "did you know" is that it assumes a fact which, as here, was not in evidence and proof of which would be inadmissible. Secondly, the point of reputation testimony is to ascertain the general talk of people about the defendant rather than the witness' own knowledge of him.

Here, the United States Attorney said "Did you know or have you heard." It is submitted that the form used is just as objectionable as if the phrase "did you know" had been used alone.

Further, the prosecution then proceeded to ask "Had you known that, would that have affected your opinion?" (R. Vol. 8, 839.) While the Court sustained appellant's objection to the question, the asking of the question in the form "had you known that" certainly suggested to the jury, and not very subtly, that it was a fact that Dr. Burks had discharged appellant for dishonesty. The error was compounded by the

Court below when it remarked in response to appellant's objection to the first question, "I have to assume that the question is asked in good faith by the government." (R. Vol. 8, 839.)

It would appear that the error was prejudicial for the imputation that appellant, a doctor, had been discharged for dishonesty by another doctor could hardly fail to impress the jury in their evaluation of appellant's testimony and defense.

CONCLUSION.

It is most respectfully submitted that where the government's technique of proof in the criminal case now before this Court, while proper, "is so fraught with danger for the innocent that the Court must closely scrutinize its use", *Holland v. United States*, U.S., 99 L. Ed., Adv. R. 132 the errors committed by the trial Court and the prejudicial misconduct of the United States Attorney demand a reversal of the judgment of conviction of appellant.

Dated, San Francisco, California,
January 26, 1955.

DAVIS & COLVIN,
REYNOLD H. COLVIN,
SIDNEY FEINBERG,
Attorneys for Appellant.

(Appendices A and B Follow.)

Appendices A and B.

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APPENDIX A
COMPUTATION OF NET WORTH
DECEMBER 31, 1936 to DECEMBER 31, 1948
RAYMOND J. AND LUCILLE B. KASPER
FRESNO, CALIFORNIA

NUMBER	ASSETS	12/31/36	12/31/37	12/31/38	12/31/39	12/31/40	12/31/41	12/31/42	12/31/43	12/31/44	12/31/45	12/31/46	12/31/47	12/31/48
10	Wahoo State Bank - Checking Acct.	182.39	202.94	409.10	193.31	383.63	209.99							
11	" " - Savings Acct. #308				750.00									
28	Bank of America - Fresno - Checking Acct.							3.00	3.00	3.00				
31	" " - Savings Acct. #5027							970.22	308.65	467.02	453.15	413.15	40.92	601.34
32	Security First Nat. Bk. - Fresno - Acct. #67508								4,514.50	3,014.67	5,115.69	5,166.96	5,231.74	5.00
33	U. S. Series E Bonds										1,002.50	4,424.79	5,049.41	5.00
34	Notes Rec. - Edward Kirkorian								93.75	712.50	806.25	806.25	8,306.25	6,325.00
35	Real Estate - Farm in Nebraska					8,000.00	8,000.00	8,000.00						
36	" " - 1058 So. Chestnut, Wahoo, Neb.	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00							
37	" " - 2102 So. 8th St., Omaha, Neb.	2,800.00	2,800.00	2,800.00										
38	" " - 1206 Thorne Ave., Fresno							7,761.10	7,761.10	7,761.10	7,761.10	7,761.10	7,761.10	
39	Isp. to above property								5,238.90	5,238.90	5,238.90	5,238.90	5,238.90	
40	" " - 80 acre Dairy Farm												36,529.74	36,529.74
41	" " - Lots 166-167 (5250 Van Ness Ave., Fresno)												1,000.00	10,009.33
42	Home on above property													43,264.12
43	Sprinkler System and Garden Isp.												19.22	782.50
44	Household Furnishings - Sletter's											19.37	738.62	1,531.26
45	" " - Turpin's												738.62	1,531.26
46	" " - Streit's Drapery													1,334.61
47	" " - McWhan's							517.72	544.27	703.68	767.58	1,247.64	1,247.64	515.56
48	" " - Roth									446.78	515.56	515.56	515.56	1,150.00
49	Improvements to home - Miller													958.78
50	Linoleum for home - Bullinger													5,329.50
51	Oriental Rug - Daporius													812.25
52	Pur Coat - Sable Bay Fur Co.										812.25	812.25	812.25	812.25
53	Plymouth Car - 1942						1,104.00	1,104.00	1,104.00					
54	Packard Car - 1942									2,050.00	2,050.00			
55	Packard Car - 1946											2,050.00	2,050.00	2,050.00
56	Packard Car - 1948												2,006.00	3,949.25
57	Airplane - Per 1947 return													
58	Medical Office Equipment - 1943 to 1948							1,700.00	1,000.00	1,000.00	1,500.00	1,500.00	3,000.00	4,000.00
59	return, Schedule F	3,200.00	3,200.00	3,200.00	3,200.00	3,200.00	3,200.00							
60	Net Worth in Wahoo - Wahoo	3,200.00	3,200.00	3,200.00	3,200.00	3,200.00	3,200.00							
	TOTAL	8,282.39	9,202.94	9,209.10	6,943.31	14,383.63	15,313.99	11,077.22	15,202.72	20,791.46	25,890.30	31,481.91	77,541.35	121,132.50
LIABILITIES														
61	Due to Daporius, Inc., S.F.													4,129.50
62	" " - Wahoo State Bk. - R. E. Loan	2,768.42	2,638.09	2,512.76	2,357.02	2,205.63	2,046.50							
63	" " - Personal Loan 64.37			100.00										
64	" " - " " " " 66.68			400.00										
65	" " - " " " " 36.29	100.00												
66	" " - O. F. Neal, Omaha					6,000.00	5,817.75							
67	" " - Equitable Life Assurance Co.							5,500.00						
68	" " - Jacob Machlin								4,781.89					
69	" " - Bank of America - 10-2438 Farm											10,000.00	9,000.00	
70	" " - " " - 10-2552 Home												14,000.00	
	TOTAL	2,868.42	2,638.09	3,012.76	2,357.02	8,205.63	7,864.25	5,500.00	4,781.89				10,000.00	27,129.50
	Net Worth at End Of Year	6,113.97	6,364.85	6,196.34	4,586.29	6,178.00	7,449.74	5,577.22	10,520.83	20,791.46	25,890.30	31,481.91	67,541.35	94,000.00
	Net Worth at Beginning Of Year		6,113.97	6,364.85	6,196.34	4,586.29	6,178.00	7,449.74	5,577.22	10,520.83	20,791.46	25,890.30	31,481.91	67,541.35
	Increase in Net Worth		250.88	(168.51)	(1,610.05)	1,591.71	1,271.74	(1,872.52)	4,943.61	10,270.63	5,098.84	5,591.61	36,059.44	26,468.65
ADDITIONS														
71	Federal Income Taxes Paid	None	None	None	None	None	None	None	155.14	400.00	1,167.65	240.00	1,012.00	778.00
									(1.25)					
72	Life Insurance - Premiums Paid										10,792.92	482.55		
73	Mutual Life Insurance Co.										2,408.26			
74	Prudential Life Insurance Co.										962.00			1,473.00
75	United Benefit Life Ins.										89.08	89.08	89.08	89.08
76	Western Bohemian Fmt. Life Ins.												870.00	
77	Capital loss on airplane - non deductible portion													
78	Increase in Net Worth Plus Additions							1,591.71	1,271.74	(1,872.52)	5,092.50	11,721.71	20,238.75	28,030.52
														28,030.52
REDUCTIONS														
79	Refund of Ins. Prem. - Mutual Life Ins.													4,852.06
80	Dividends on Life Ins. - " " "													161.25
81	" " - " " - Prudential Life												36.80	40.20
82	Capital gain on sale of home - non-taxable portion													3,500.00
REGRESSION CLAIMED ON RETURN														
83	Automobiles - Sch. F							250.00	512.50	512.50	512.50	512.50	512.50	512.50
84	Office Equipment - Sch. F							100.00	100.00	150.00	150.00	150.00	150.00	150.00
85	Farm Equipment - Form 1040-F, Page 3								612.50	662.50	662.50	1,099.30	10,956.01	
86	Total Reductions							4,747.50	11,109.21	19,876.25	6,802.74	36,931.22	17,842.72	
87	Balance - Taxable Net Income	250.88	(168.51)	(1,610.05)	1,591.71	1,271.74	(1,872.52)	2,480.40	4,175.30	6,652.63	7,204.89	7,204.89	7,204.89	10,650.28
88	Net Income for Returns - 1943 - 1948													
89	Unreported Income - 1943 - 1948							2,240.10	6,933.91	13,223.62	(502.15)	29,624.50	7,842.14	

Appendix B

PROFESSIONAL EARNINGS

COMPUTED vs. ACTUAL

1947 and 1948

FROM SERVICES

Office Calls—16 per day—320 per month @ \$3.00==	\$960.00/mo.
House Calls—1 night @ \$6.00 and 2 day @ \$4.00, 30 days==	420.00/mo.
Confinements—4 per mo. @ \$50.00==	200.00/mo.
Major Operations—20 per year @ \$150==	\$3,000.00==
Minor Operations—5 per month @ \$30.00==	150.00/mo.
Lab. Work	60.00/mo.
Total—Per month	<u>\$2,040.00</u>
Total—Per Year (12 x \$2,040.00)	<u>\$24,480.00</u>
Less: Losses From Unpaid Charges to Patients—33 $\frac{1}{3}$	<u>8,160.00</u>
Gross Income—Computed Cash Basis—Per Year	<u>\$16,320.00</u>

<u>Year 1947</u>	<u>Computed Income</u>	<u>Income Tax Return Reported Income</u>
Gross Income	\$16,320.00	\$16,486.35
Office Overhead—Actual	7,760.08	7,760.08
Net Income	<u>\$ 8,559.92</u>	<u>\$ 8,726.27</u>
 <u>Year 1948</u>		
Gross Income	\$16,320.00	\$16,727.10
Office Overhead—Actual	8,930.17	8,930.17
Net Income	<u>\$ 7,389.83</u>	<u>\$ 7,796.93</u>

